

## REFERRAL OF H.R. 1258

MAY 7, 2002.—Referred to the Private Calendar and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

[To accompany H. Res. 103]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 103) referring the bill (H.R. 1258), entitled “A bill for the relief of Sarabeth M. Davis, Robert S. Borders, Victor Maron, Irving Berke, and Adele E. Conrad”, to the chief judge of the United States Court of Federal Claims for a report thereon, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

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### PURPOSE AND SUMMARY

The resolution would refer H.R. 1258 to the U.S. Court of Federal Claims for an evaluation of this claim as well as a determination of any amount of appropriate compensation.

### BACKGROUND AND NEED FOR THE LEGISLATION

In 1976, the Los Caballeros Center partnership bought 9 acres of property adjacent to the U.S. Army’s Los Alamitos, California re-

serve center. In 1980, with the approval of the U.S. Army and the City of Los Alamitos, the land was developed. In November 1989, the partnership agreed to sell the property to Grace Church for \$14.7 million. On February 12, 1990, 2 days before the closing of escrow, the Army informed the City Council that part of the property was now in the Army's proposed new "Clear Zone"—the area around the base that the military recommends local governments keep free from any development to ensure the safety of aircraft operations. Later that year, it was clarified that the property was not in the Clear Zone at that time, but a preliminary study recommended the property be included in the Clear Zone. Four years later, the Army finally issued a new Clear Zone plan which excluded the property from any restriction on commercial development. Unfortunately, because of the Army's delay of 4 years on a decision and the City Council's refusal to allow any rezoning of the property, the partnership was forced into financial ruin. In May 1992, the partnership was forced to file Chapter 11 bankruptcy. Finally, in August 1995, the partnership lost the property to foreclosure. In 1996, the partnership estimated their losses at \$21 million. The five claimants covered by the bill and resolution are now elderly and have lost what would have provided for their retirement.

The partnership initially pursued a claim against the Federal Government under the Federal Tort Claims Act. The Army denied the claim stating that the claim was a taking of private property rather than a tort claim. They advised the partnership to file a takings claim under the Tucker Act. Per Army instructions, the partnership filed a takings claim in August 1995. However, in June 1996, when the case came before the Court of Federal Claims, the Justice Department (representing the Department of the Army) argued successfully that the claim was not a takings claim, but a tort claim. By then, the time limit on the partnership's ability to file an appeal of the Federal Tort Claims Act denial by the Department of the Army had expired.

In its decision, the Court of Federal Claims dismissed the case on jurisdictional grounds, yet felt compelled to express its sympathy for the partnership stating "The procedural history of this case shows that the military effectively mislead [sic] plaintiffs in this matter . . . Congress did not intend those jurisdictional limits to be manipulated to prevent a claimant from recovering compensation against the Government."

In a July 21, 2000, letter from the Department of the Army, Secretary Caldera stated "I regrettably conclude that I am unable to provide any relief to the claimants under existing law. Particularly in view of the Court of Federal Claims decision regarding this matter, however, I believe this may be an instance where private relief legislation is appropriate."

#### HEARINGS

No hearings were held on H. Res. 103.

#### COMMITTEE CONSIDERATION

On November 1, 2001, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the res-

olution H. Res. 103 by voice vote, a quorum being present. On April 24, 2002, the Committee met in open session and ordered favorably reported the resolution H. Res. 103 without amendment by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H. Res. 103 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, H. Res. 103, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 29, 2002.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H. Res. 103, a resolution referring the bill (H.R. 1258) entitled "A bill for the relief of Sarabeth M. Davis, Robert S. Borders, Victor Maron, Irving Berke, and Adele E. Conrad," to the chief judge of the United States Court of Federal Claims for a report thereon.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H. Res. 103—A resolution referring the bill (H.R. 1258), entitled “A bill for the relief of Sarabeth M. Davis, Robert S. Borders, Victor Maron, Irving Berke, and Adele E. Conrad,” to the chief judge of the United States Court of Federal Claims for a report thereon.*

H. Res. 103 would refer H.R. 1258, a private relief bill introduced in the House of Representatives on March 27, 2002, to the chief judge of the United States Court of Federal Claims. The chief judge would then report to the Congress on the court’s findings of fact and conclusions of law regarding the claims addressed in H.R. 1258, along with the amount, if any, legally or equitably due to the claimants.

CBO estimates that H. Res. 103 would have no significant impact on the Federal budget. Payment to the claimants of any amount based on the report of the Court of Federal Claims would depend on further Congressional action. The resolution would not affect receipts or direct spending; therefore, pay-as-you-go procedures would not apply.

The CBO staff contact for this estimate is Deborah Reis, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

## AGENCY VIEWS



SECRETARY OF THE ARMY  
WASHINGTON

July 21, 2000

RECEIVED

JUL 21 2000

HON. COX DC OFFICE

The Honorable Christopher Cox  
United States House of Representatives  
Washington, D.C. 20515-0547

Dear Representative Cox:

This is in reply to your letter on behalf of Ms. Sarabeth Davis and her partners, who allege that their property was damaged as a result of the release of a Corps of Engineers Draft Air Installation Compatible Use Zone Study. You asked if Ms. Davis and her partners could be compensated for these damages under the Military Claims Act. I apologize for the delay in responding to your request, but I wanted to ensure that all possible means of providing relief to Ms. Davis and her partners were fully examined.

Based on their thorough review of this matter, including an examination of the case law you identified, my attorneys have advised me that the Military Claims Act does not provide a basis upon which relief can be granted to Ms. Davis and her partners. That statute contains language precluding the Army from making a payment for any claim that is recognizable under the Federal Tort Claims Act. In this case, the Court of Federal Claims recognized the partnership's claims were founded in negligence and therefore were recognizable under the Federal Tort Claims Act. Accordingly, as a matter of law, the Army is precluded from making any payment to Ms. Davis and her partners under the Military Claims Act.

My attorneys also examined the possibility of the Army reconsidering the claim under the Federal Tort Claims Act. Because Ms. Davis and her partners did not submit a new claim within two years of the date of the court's decision, however, any claims they had under the Federal Tort Claims Act are now barred by law. Because the two-year deadline is a jurisdictional matter under the statute, I can not waive this filing requirement.

In summary, I regrettably conclude that I am unable to provide any relief to the claimants under existing law. Particularly in view of the Court of Federal Claims decision regarding this matter, however, I believe this may be an instance where private relief legislation is appropriate. If you desire, I would be happy to discuss this further and provide whatever assistance is appropriate under the circumstances.

Sincerely,

Louis Caldera

MARKUP TRANSCRIPT

**BUSINESS MEETING**

**WEDNESDAY, APRIL 24, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

[Intervening business.]

Chairman SENSENBRENNER. Okay. The next item on the agenda is the adoption of H.R. 486 for the relief of Barbara Makuch, H.R. 487 for the relief of Eugene Makuch, and H. Res. 103 referring the bill H.R. 1258 to the chief judge of the U.S. Court of Federal Claims for a report thereon. Without objection, the bills will be considered en bloc.

[The resolution, H. Res. 103, follows:]

107TH CONGRESS  
1ST SESSION

## H. RES. 103

Referring the bill (H.R. 1258), entitled “A bill for the relief of Sarabeth M. Davis, Robert S. Borders, Victor Maron, Irving Berke, and Adele E. Conrad”, to the chief judge of the United States Court of Federal Claims for a report thereon.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2001

Mr. COX submitted the following resolution; which was referred to the Committee on the Judiciary

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## RESOLUTION

Referring the bill (H.R. 1258), entitled “A bill for the relief of Sarabeth M. Davis, Robert S. Borders, Victor Maron, Irving Berke, and Adele E. Conrad”, to the chief judge of the United States Court of Federal Claims for a report thereon.

1 *Resolved,*

2 **SECTION 1. REFERRAL.**

3 Pursuant to section 1492 of title 28, United States  
4 Code, the bill (H.R. 1258), entitled “A bill for the relief  
5 of Sarabeth M. Davis, Robert S. Borders, Victor Maron,  
6 Irving Berke, and Adele E. Conrad”, now pending in the

1 House of Representatives, is referred to the chief judge  
2 of the United States Court of Federal Claims.

3 **SEC. 2. PROCEEDINGS AND REPORT.**

4 Upon receipt of the bill, the chief judge shall—

5 (1) proceed under section 2509 of title 28,  
6 United States Code; and

7 (2) report back to the House of Representa-  
8 tives, at the earliest practicable date, providing—

9 (A) findings of fact and conclusions of law  
10 that are sufficient to inform the Congress of the  
11 nature, extent, and character of the claim for  
12 the compensation referred to in the bill as a  
13 legal or equitable claim against the United  
14 States; and

15 (B) the amount, if any, legally or equitably  
16 due from the United States to the claimants.

○



Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania for a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration and Claims reports favorably the bills H.R. 486, H.R. 487, and H. Res. 103 and moves their favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, they will be considered as read and open for amendment at any point. Without objection, statements can be placed in the record at this point.

Are there any amendments to either of the bills? If not, the Chair notes the presence of a reporting quorum. The question is on—

Ms. JACKSON LEE. Sorry, Mr. Chairman. Could you repeat the bills that you—are you doing these en bloc?

Chairman SENSENBRENNER. H.R. 486, H.R. 487, and H. Res. 103 en bloc.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. Let me just add my support and I will offer a statement in the record for those three bills. Thank you.

Chairman SENSENBRENNER. The Chair notes the presence of a reporting quorum. The question is on reporting the three bills favorably. Those in favor will signify by saying aye? Those opposed, no?

The ayes appear to have it. The ayes have it, and the bills are favorably reported. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit additional supplemental, dissenting, or minority views.

At this point in time, because the gentleman from California, Mr. Berman, had an appointment, the Committee stands in recess subject—okay. Then the Chair recognizes the gentleman from North Carolina, Mr. Coble.

